

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

ELIJAH MAVEN,)	
)	
Plaintiff,)	
)	
v.)	C.A. #1:16-cv-998 (LMB/IDD)
)	
S. BARCLIFF, <i>et al.</i>)	
)	
Defendants.)	

RULE 26(f) JOINT PROPOSED DISCOVERY PLAN

Plaintiff, Elijah Maven (“Plaintiff”) and Defendants, S. Barcliff, A. Bentley, W. Dickerson, and the Warden of Sussex II State Prison in his official capacity (“Defendants”), by and through their respective undersigned counsel, respectfully submit the following Rule 26(f) Joint Discovery Plan in accordance with this Court’s Order dated June 6, 2018.

I. Conference of the Parties

On June 18, 2018, the parties conferred prior to the initial Fed. R. Civ. P. 16(b) Pretrial Conference to consider claims, defenses, possibilities of a prompt settlement, trial before a magistrate judge, and to arrange for disclosures as required by Rule 26(a)(1).

II. Initial Disclosures

Rule 26(a)(1) initial disclosures will be exchanged by the parties by July 13, 2018.

III. Settlement Potential

The parties have discussed settlement and believe that it is a possibility. The parties have conferred with Judge Davis’s chambers and have scheduled a mediation conference for August 23, 2018.

IV. Magistrate Judge

The parties have conferred and do not agree to try this matter with a United States District Court Magistrate Judge.

V. Depositions

Depositions will be taken in accordance with the Federal Rules of Civil Procedure.

VI. Fact Depositions

The parties do not anticipate the need to take more than 5 non-party, non-expert witness depositions. The parties expressly reserve the right to depose other individuals pursuant to Fed. R. Civ. P. 30 and 45 as is indicated by their investigation of, discovery in, and litigation of this case. Should it become necessary, the parties will seek leave of the Court to take additional non-party, non-expert witness depositions pursuant to Fed. R. Civ. P. 30(a)(2)(A).

VII. Interrogatories

The parties do not anticipate they will need to serve more than thirty (30) interrogatories per party, including parts and subparts. Should the need arise, the parties will seek leave of court before serving additional interrogatories.

VIII. Requests for the Production of Documents

The parties agree that the exchange of written requests for the production of documents and responses shall be conducted pursuant to Fed. R. Civ. P. 34, including the specific requirements governing electronic documents.

IX. Requests for Admissions

The parties agree that the exchange of written requests for admissions shall be conducted pursuant to Fed. R. Civ. P. 36.

X. Expert Witnesses

The parties agree to the following schedule for identification of expert witnesses, in conformance with Local Civil Rule 26(D):

<u>Plaintiff's Expert Report(s):</u>	Monday, September 10, 2018
<u>Defendants' Expert Report(s):</u>	Wednesday, October 10, 2018
<u>Any Rebuttal Report:</u>	Thursday, October 25, 2018

Depositions of any expert witness will take place after that expert's report has been served. The parties agree to cooperate to ensure that depositions of retained experts are completed on or before November 9, 2018 pursuant to this Court's Order dated June 6, 2018.

XI. Subpoenas

The parties expressly reserve their rights to conduct additional discovery through the use of subpoenas and subpoenas *duces tecum* pursuant to Fed. R. Civ. P. 45 as is indicated by each party's investigation of, discovery in, and litigation of this case.

XII. Serving and Filing Pleadings

Service and filing of pleadings in this case shall adhere to the United States District Court for the Eastern District of Virginia Electronic Case Filing policies and procedures.

XIII. Disclosure or Discovery of Electronically Stored Information

The parties agree that electronically stored information produced in discovery, if any, may be produced in hard copy, as attachments to e-mail, or on CD. The parties agree that the electronically stored information produced may be in any of the following formats: .DOC, .XLS, JPG and PDF. The parties agree that, where possible, PDF documents will be produced in readable format. In the event that any party, after reviewing the document, determines that it would like the metadata of that document, that party shall request in writing the metadata, and, if available, subject to objection of counsel to be resolved by the court if raised, the metadata shall be produced promptly subject to objection of counsel and ruling of court, if raised.

XIV. Claims of Privilege or Protection of Trial Preparation Materials

If a privilege or privileges are asserted as to any information requested in discovery, the party asserting privilege shall specify the legal basis for such assertion and identify sufficient facts giving rise to any alleged claim of privilege. The party asserting privilege shall identify any information, document, or other material (collectively, “material”) for which any privilege is asserted by means of production of a Privilege Log. For all material identified in the Privilege Log, the asserting party shall identify the date, author or generator, persons shown as having been or otherwise known as having been a recipient of the material, and any other information sufficient to establish the applicability of the privilege asserted.

Any communications exclusively between law firms (including the Office of the Attorney General) and their respective clients are privileged and need not be listed on a privilege log.

XV. Preservation of Discoverable Information

The parties have addressed the matter of preservation of discoverable information. The parties believe that they have taken reasonable steps to preserve all such information.

XVI. Subjects of Discovery

Plaintiff expects that discovery will be needed in the following areas: Defendants’ previous contacts with and knowledge of plaintiff, including but not limited to on or about July 26, 2015 – July 31, 2015; defendants’ participation in any investigation into and prosecution of Mr. Maven’s rape; defendants’ training in responding to inmate reports of actual or threatened inmate-on-inmate violence or harassment; documents regarding or implicating the allegations in the complaint.

Defendants expect that discovery will be needed in the following areas: in addition to the topics identified by the plaintiff, Defendants will seek discovery relative to the plaintiff's prior complaints regarding his cellmate in late July 2015 (if any); the plaintiff's prior complaints about other VDOC cellmates (if any); the cellmate's disciplinary history within VDOC; any other factors tending to establish that any employee should have been on notice that the cellmate posed a risk to this Plaintiff.

XVII. Completion of Discovery

The parties understand that discovery must be completed by November 9, 2018, pursuant to this Court's Order dated June 6, 2018.

XVIII. Summary Judgment

The parties agree that Fed. R. Civ. P. 56 and Local Civil Rule 56 shall govern motions for summary judgment.

XIX. Protective Order

In the event the any party believes that a protective order is necessary, the parties shall work together to agree on a form of a protective order to be submitted for court approval. The parties agree that the production and conduct of discovery shall not be withheld or delayed in any manner because a protective order has not been entered; instead the parties will maintain the confidentiality of any documents or information designated in good faith as confidential unless and until a protective order is entered governing the designated documents and information.

XIX. Other Matters

A. Dispositive Motions

All dispositive motions shall be governed by Local Rule 7.

B. Motions in Limine

The parties shall file their Motions *in Limine* to be heard the Friday before trial or earlier if possible.

C. Witness List, Exhibits (Objections) and Stipulations

These matters are addressed in this Court's Order dated June 6, 2018 which sets the Final Pretrial Conference for Thursday, November 15, 2018, at 10:00 a.m. The parties propose that their witness lists and full copies, marked and tabbed, of their proposed trial exhibits shall be exchanged on or before the Final Pretrial Conference. Each party shall file their objections to the other party's witnesses and/or trial exhibits on or before November 26, 2018 per this Court's Order dated June 6, 2018.

D. Warden of Sussex II State Prison

Counsel for defendants has indicated that she is not certain whether she will move to dismiss the Warden of Sussex II State Prison in his official capacity. The parties agree that the production and conduct of discovery shall not be withheld or delayed in any manner because a motion or decision on the motion to dismiss is pending.

Dated: June 18, 2018

Respectfully submitted,

ELIJAH MAVEN,

By counsel

//s/ Maxwelle C. Sokol
Maxwelle C. Sokol, #89589
Victor M. Glasberg, #16184
Victor M. Glasberg & Associates
121 S. Columbus Street
Alexandria, VA 22314
703.684.1100 / Fax: 703.684.1104
msokol@robinhoodesq.com
Counsel for plaintiff

and

S. BARCLIFF, *et al.*

By counsel

/s/ Margaret Hoehl O'Shea
Margaret Hoehl O'Shea, #66611
Criminal Justice & Public Safety Division
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 225-2206/ Fax: (804) 786-4239
moshea@oag.state.va.us
Counsel for Defendants

CERTIFICATE OF SERVICE

I, Maxwelle C. Sokol, hereby certify that on a true and accurate copy of plaintiff's Proposed Rule 26(f) Joint Discovery Plan was served upon counsel listed below on June 18, 2018, and that I electronically filed this certificate of service with the clerk of the court.

/s/ Margaret Hoehl O'Shea
Margaret Hoehl O'Shea, #66611
Criminal Justice & Public Safety Division
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 225-2206/ Fax: (804) 786-4239
moshea@oag.state.va.us

//s// Maxwelle C. Sokol
Maxwelle C. Sokol, #89589
Victor M. Glasberg, #16184
Victor M. Glasberg & Associates
121 S. Columbus Street
Alexandria, VA 22314
703.684.1100 / Fax: 703.684.1104
msokol@robinhoodsq.com

Counsel for plaintiff